

**Before the Local Boundary Commission
Department of Commerce, Community and Economic Development
State of Alaska**

In re: Proposal to Annex
Approximately .05 Square Miles
of territory to the City of Fairbanks
by Legislative Review

RESPONDENT'S REQUEST FOR RECONSIDERATION

The Respondent in the above-entitled annexation petition, the Fairbanks North Star Borough (hereinafter, "Respondent" or "FNSB,") requests that the Local Boundary Commission order reconsideration of the above-entitled proposal for annexation of the Fred Meyer subdivision.¹ Pursuant to 3 AAC 110.580(e), the commission will grant a request for reconsideration if the commission determines

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principal of law; or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

This request for reconsideration is for the following reasons:

1. THE LOCAL BOUNDARY COMMISSION FAILED TO ADDRESS THE FOLLOWING MATERIAL ISSUE OF FACT:

The Local Boundary Commission (LBC) failed to properly address the material issue of fact that the annexation of the Fred Meyer subdivision would create an enclave

¹ The Respondent is only asking for reconsideration of the annexation to the City of Fairbanks of Fred Meyer subdivision and is not asking for reconsideration of the annexation of the "enclave lots."

lot. During discussion of the annexation petition at the decisional meeting, Chairman Crystal stated, in complete conflict with the maps and testimony presented, that “the territory is wholly or substantially surrounded by the annexing city, and I think it is.” (Transcript of Decisional Hearing, p. 21.) Later, when discussing whether the annexation would create an enclave lot, as discussed in 3 AAC 110.130(b), the Commission asked for a definition of an enclave lot. Staff gave the dictionary definition of an enclave as “a territory surrounded or nearly surrounded by the territory of another country.” Staff continued by stating that “Commerce finds that Fred Meyer is contiguous to the city but that annexing it would arguably create an enclave.” The LBC did not further discuss the enclave lot situation and moved to section (c). (Transcript of Decisional Hearing, p. 41.) At the hearing, the LBC did not discuss any testimony refuting the fact that the City only bordered the easterly boundary and only part of the southerly boundary as shown on the attached map. (Exhibit 6 from the Respondent’s Brief.) The annexation of the Fred Meyer subdivision will result in one lot nearly surrounded by the Borough thus creating an enclave.

2. THE LOCAL BOUNDARY COMMISSION FAILED TO ADDRESS THE FOLLOWING CONTROLLING PRINCIPLE OF LAW:

Administrative regulation 3 AAC 110.130(b) states that “[a]bsent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential

municipal services on an efficient, cost-effective level.” Pursuant to the regulation, when an enclave lot is formed, there is a presumption that the regulation has not been met. Once the presumption attaches, there must be a specific and persuasive showing that there is sufficient land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

As shown above, the facts are such that the annexation does create an enclave. Furthermore, the LBC’s Statement of Decision states that the annexation “arguably creates an enclave.” (Statement of Decision, p. 9.) Therefore, the presumption should be applied that the annexation did not include all land necessary to allow for development of essential municipal services on an efficient, cost-effective level which can only be overcome by a specific and persuasive showing to the contrary.

The LBC’s Statement of Decision does not include any specific and persuasive showing to the contrary. The decisional statement merely gives a summary statement that “the territory is already fully developed and receiving services” and “the expanded City of Fairbanks would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective manner.” (Statement of Decision, p. 9.) There is no discussion as to how receiving services from the Borough, the service area and the State of Alaska shows that the annexation contains all land necessary to efficiently and cost-effectively develop essential City services. A summary statement should not be sufficient to establish the regulatory requirement of a “specific and persuasive” showing to the contrary.

In the decisional meeting, when discussing 3 AAC 110.130(b), the LBC did not discuss any specific and persuasive showing that this requirement could be met. The Commission merely listened to the definition of an enclave and then went on to item 3 AAC 110.130(c). (Transcript of Decisional Hearing, p.41.) Therefore, the requirement of 3 AAC 110.130(b) was not met.

For the forgoing reasons, the Respondent respectfully requests that the Local Boundary Commission reconsider the decision annexing the Fred Meyer subdivision to the City of Fairbanks.

DATED at Fairbanks, Alaska this 28th day of December, 2009.

Fairbanks North Star Borough

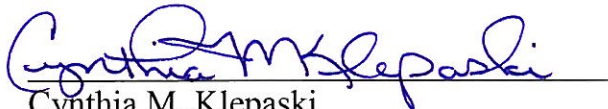

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Exhibit 6